92-685

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1992

STATE OF OHIO, on relation of Darlene Rogers,
Petitioner,

vs.

ROBERT A. TAFT, Ohio Secretary of State, et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio
Brief in Opposition for Respondent

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BEST AVAILABLE COPY

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

QUESTION PRESENTED FOR REVIEW

Whether this Court has jurisdiction to grant a writ of certiorari where: (1) the decision below rests upon an adequate and independent state ground; (2) the facts below will not support a determination by this Court of the question presented by the Petitioner; and (3) the petition has not been timely filed.

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STATEMENT OF THE CASE

Prior to February 20, 1992, Petitioner was furnished with declaration of candidacy forms by the Mahoning County Board of Elections. At that time, Petitioner was informed that the filing deadline for declarations of candidacy for nomination as a candidate of the Democratic Party for election to the office of State Representative from the 64th House District was February 20, 1992.

On May 8, 1992, Petitioner attempted to file with the Board of Elections a declaration of candidacy for election to the office of State Representative from the 64th House District. See Appendix to Petition for Certiorari, hereinafter referred to as "A.", at A.1. Because the deadline for the filing of declarations of candidacy for the 64th House District was February 20, 1992, the Board of Elections did not accept the petitions for filing. Instead, the petitions were accepted

only for the purpose of establishing that Petitioner had attempted to file them on May 8, 1992. See A.1.

Upon the receipt of the petitions for the limited purpose noted above, the Board of Elections checked the signatures on the petitions for sufficiency as required by Ohio law. Of the sixty signatures found on the petitions, the Board of Elections determined that, under Ohio law, only forty-six of the signatures were valid. Because the petitions had been untimely filed and because the petitions contained only forty-six valid signatures, when Ohio law required fifty valid signatures, the petitions were disallowed by the Board of Elections. See A.2.

On May 18, 1992, Petitioner filed an original action in mandamus in the Supreme Court of Ohio. The action set forth three claims. The first alleged that the Defendants had a clear duty to accept the declaration of candidacy because the filing deadline for the 64th House District had been implicitly extended

by the U.S. District Court for the Northern District of Ohio in the case of Quilter v. Voinovich, U.S. District Court Case No. 91 CV 2219 (May 5, 1992). See A.2.

Petitioner's second claim for relief alleged that the Board of Elections had improperly invalidated fourteen of the signatures on the petitions in violation of provisions of Ohio law. See A.2.

Finally, in Petitioner's third claim for relief, she alleged that she was a member of the class in Armour v. Ohio, 775 F. Supp. 1044 (N.D. Ohio 1991) and that the Supreme Court of Ohio should order that majority-minority districts be created for all at large elections for multi-member offices in Mahoning County. See A.2.

On June 2, 1992, the Ohio Supreme Court entered an order denying the request for a writ of mandamus, "consistent with the opinion to follow." See A.54. The opinion was announced June 19, 1992. See A.1.

WHY WRIT SHOULD BE DENIED

POINT I

THIS COURT HAS NO JURISDICTION TO GRANT A WRIT OF CERTIORARI WHERE THE DECISION BELOW RESTS UPON AN ADEQUATE AND INDEPENDENT STATE GROUND.

Where a state court decision indicates clearly that it is based on bona fide separate, adequate and independent grounds, the United States Supreme Court will not undertake to review the decision. Michigan v. Long, 463 U.S. 1032, 1041 (1983). This Court has held that its only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. Ridgway v. Ridgway, 454 U.S. 46, 54 (1981). Where a state court rests its decision on both state and federal grounds, either of which are dispositive of the matter, this Court has held that it has no jurisdiction. Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562, 568 (1977) (citing Fox Film Corp. v. Muller, 296 U.S. 207 (1935)).

In the instant case, the decision of the Ohio Supreme Court rests upon an adequate and independent state ground: to wit, that Petitioner had failed to obtain the requisite number of signatures required under Ohio law for declarations of candidacy. In addition, even if the Ohio Supreme Court had determined that, as a matter of federal law, the filing deadline for the 64th House District should have been extended, the court would have nonetheless denied the request for a writ of mandamus since the requisite number of signatures had not been obtained by Petitioner.

It is submitted that the decision below rests upon an adequate and independent state ground and, therefore, that this Court has no jurisdiction grant a writ of certiorari in this case.

POINT II

THIS COURT SHOULD NOT GRANT A WRIT OF CERTIORARI WHERE THE FACTS BELOW WILL NOT SUPPORT A DETERMINATION BY THIS COURT OF THE QUESTION PRESENTED BY PETITIONER.

This Court should not grant a writ of certiorari where the facts below will not support a determination by this Court of the question presented by Petitioner.

As set forth in the statement of the case, Petitioner's complaint had alleged three claims for relief, two of which were personal to her. Her third claim for relief presented the issue which Petitioner is now presenting to this Court for review. However, the record below is devoid of any evidence sufficient to support a determination by this Court of the issue presented.

A reading of the Ohio Supreme Court's opinion indicates that only one paragraph was devoted to this final claim for relief. See A.6. In that paragraph, the Ohio Supreme Court found that nothing under the Ohio Revised Code required the county Board of Elections to act as

an apportionment agent. Id. The court further found that Petitioner had adduced no evidence that the state had violated the Fifteenth Amendment to the U.S. Constitution or the Voting Rights Act of 1965. Id.

Respondent points out that Petitioner had the opportunity to litigate this issue before the Ohio Supreme Court and could have presented evidence in support of the claim. Yet, the issue was not litigated and Respondent did not have the opportunity to present evidence on the matter. The matter is thus not ripe for review at this time.

Finally, it should be noted that Respondent has always taken the position that the issue which Petitioner now presents for review was never properly before the Ohio Supreme Court. Petitioner had an adequate remedy at law by way of a declaratory judgment action on the matter. In fact, the issue was presented to the U.S. District Court for the Northern District of Ohio in the case of Armour v. Ohio, Case No. C88-1104Y. Rather than prosecute an appeal from

the decision of the district court in that case, Petitioner chose to dismiss the appeal and present the matter directly to the Ohio Supreme Court in connection with her action in mandamus.

It is submitted that Petitioner failed to adequately and properly present this issue in the lower courts. As such, this Court should not now grant a writ of certiorari to review it.

POINT III

THE PETITION WAS NOT TIMELY FILED.

As set forth in the statement of the case, the Ohio Supreme Court issued an order on June 2, 1992, denying Petitioner's request for a writ of mandamus, consistent with "the opinion to follow." The opinion was announced on June 19, 1992.

Under 28 U.S.C. Section 2101(c), a petition for writ of certiorari in a civil case must be filed within ninety days of the judgment upon which the decision rests. It has been held by this Court that this requirement is mandatory and jurisdictional. Missouri v. Jenkins, 495 U.S. 33, 45 (1990). The critical act constituting the entry of the judgment in the lower courts is the notation of the judgment in the docket by the court clerk. That is the date to be used in calculating the time for petitioning for certiorari. See Scofield v. Labor Board, 394 U.S. 423, 427 (1969); United States v. Hark, 320 U.S. 531, 534 (1944). A judgment is final for purposes of review by this

Court when the record reveals that it leaves nothing to be done by the lower court, that the court has fully adjudicated rights and that that adjudication is not subject to further review. Dept. of Banking, State of Nebraska v. Pink, 317 U.S. 264 (1942).

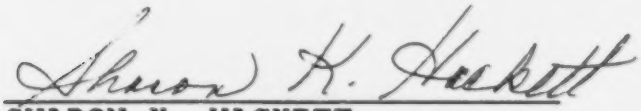
It is submitted that all rights of Petitioner were fully adjudicated on June 2, 1992 when the Ohio Supreme Court entered its order denying Petitioner's request for a writ of mandamus.

Thus, as the petition in this case was filed more than ninety days from the entry of the judgment in this case on June 2, 1992, it was untimely filed and this Court must dismiss the petition.

CONCLUSION

This Court should deny the petition for a writ of certiorari and the judgment below should stand.

Respectfully submitted,



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